STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
April 25, 2013

In the Matter of PHILLIPS/LINN, Minors.

No. 312831
Eaton Circuit Court
Family Division
LC No. 10-017575-NA

Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Respondent-appellant, the mother of the two minor children at issue in this case, appeals as of right from the order terminating her parental rights to those children under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (children would likely be harmed if returned).[1] We affirm.

Respondent-mother had a history, dating back to 2005, of alcoholism and domestic violence and of her children being placed with relatives and then returned to her. Her record includes several misdemeanor convictions dating from 2005 to 2011, including convictions of domestic violence, embezzlement, driving while impaired, resisting or obstructing a police officer, and driving on a suspended license.

The petition underlying this case listed as current concerns that (1) respondent-mother tried to hide from police officers on January 20, 2012, when they came to her house to execute an arrest "for two active warrants from non-compliance with her probation from her 6/7/2011 charge of second offense DUI" and (2) with her in the house on that day was a boyfriend who had recently served a six-month jail sentence for domestic violence, of which respondent-mother was the victim. The petition also indicated that, on January 23, 2012, respondent-mother was sentenced to serve 350 days in jail for violating probation by failing to check in with her probation officer, skipping drug screens, missing 95 alcohol tests, and returning a "Smart Start PBT system" without permission.

[1] The trial court also terminated the parental rights of the father of one of the children, whom the authorities had difficulty notifying and who did not participate in the termination hearing. The other child's father, a resident of Florida, was not a party in this case.

At the termination hearing on August 27, 2012, respondent-mother admitted that she was currently serving a jail sentence and had no job or home to return to upon completing her sentence, although she expressed hopes that a former employer would again hire her and that a homeless shelter would help her find suitable housing. By way of her various answers to questions relating to her alcohol use, respondent-mother also admitted to a history of failing to cooperate with, or benefit from, services intended to enable her to gain control over her substance-abuse problem.

Respondent-mother additionally admitted to a history of exposing the children to incidents of domestic violence, in which she was variously victim and perpetrator. Respondent-mother stated that she had benefited from counseling in this area, but nonetheless spoke of needing still more time to resolve her issues. Respondent-mother further agreed that if she were reunited with her children, and again fell back into her familiar habits, it would have a negative impact on the children.

A witness for petitioner reported that respondent-mother had virtually exhausted the services petitioner could offer, such that there was "nothing more that [petitioner could] do for her," leaving the young children in a situation threatening to "go on and on."

The trial court summarized the evidence, particularly of respondent-mother's lack of cooperation with, or benefit from, the services offered, and concluded that termination of her parental rights was appropriate because she failed to provide proper care and custody and was not likely to be able to do so in a reasonable time, because there was a reasonable likelihood that the children would be harmed if returned to her, and because termination was in the children's best interests.

An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court defers to the special ability of the trial court to judge the credibility of witnesses. *Id.*

Again, respondent-mother's parental rights were terminated under MCL 712A.19b(3)(g) and (j), which provide:

> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

In delivering its findings on factor (g), the trial court first cited respondent-mother's "very long history of alcohol abuse" and noted her "numerous arrests for driving under the influence, disorderly conduct, [and] assaultive behavior, all which are combined with a mis-use [sic] of alcohol." The court additionally noted that respondent-mother had in the past succeeded in persuading petitioner to close child protective proceedings involving her and her children, but then failed to follow through on her good intentions.

On appeal, respondent-mother suggests that the trial court exaggerated the significance of her driving record, arguing that "numerous arrests" was not an accurate way to describe her two convictions of driving while impaired. However, the court simply was referring to her numerous convictions of several different offenses, including "disorderly conduct" and "assaultive behavior," that coincided with her abuse of alcohol.

Respondent-mother argues that the trial court erred in regarding her recent history of failure to appear for alcohol tests as indicating that she was still abusing alcohol, on the ground that failing to test is not the same as having a positive test. We are not persuaded by this argument. Given respondent-mother's history and the requirement of alcohol testing as a condition of probation, the way for her to demonstrate her abstinence from alcohol was to test and achieve negative results, not to avoid the tests entirely and protest that that failure of duty left the court without a basis for assessing her success at finally controlling her alcoholism.

Significantly, neither at the termination hearing nor in her brief on appeal does respondent-mother assert that she has in fact gained control over her alcohol problem. Instead, she protests that the termination decision was "premature," thus implicitly conceding that her condition remains problematic while pleading for still more time to reform.

However, in general, "[f]ailure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo Minors*, 462 Mich at 346 n 3 (internal quotation marks and citation omitted). More particularly, a parent's persistent failure to gain control over his or her alcoholism is grounds for termination of parental rights under MCR 712A.19b(3)(g). See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996). Further, "the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991).[2]

[2] This proposition from *Dahms* involves MCL 712A.19b(3)(c)(*i*) but is applicable by analogy to MCL 712A.19b(3)(g).

Concerning factor (j), the trial court cited respondent-mother's record of domestic violence, much of which the children had witnessed and some of which had resulted in arrests. Respondent-mother admits to an extensive history of being involved in domestic violence, as both perpetrator and victim, but points out that she is not known to have been involved in any incidents of domestic violence since petitioner closed an earlier file on her, in July 2011. Respondent-mother further points to her own testimony indicating that she was aware of her need to improve in this area and was making progress. However, we note that after respondent-mother admitted that she had repeatedly exposed her children to incidents of domestic violence and stated that she needed to "get rid of negative people" in her life," she added that "change takes time . . . . It's not an overnight thing. And my issues go back a long time." She answered "no" when asked, "we don't know what kind of time we're looking at down the road for you to be able to [provide a stable and consistent environment for the children], correct?" Respondent-mother's testimony thus provided the trial court with a basis for essentially concluding that respondent-mother did not yet regard herself as fully capable of distancing herself from such "negative people" as have engaged in domestic violence with her. That information, along with the court's prior determination that respondent-mother's alcoholism remained a problem and the court's notation that alcohol abuse was linked with the incidents of domestic violence, provided the court with a sound basis for concluding that if the children were returned to her, there would be a reasonable likelihood that they would again suffer emotional trauma from bearing witness to their mother as perpetrator or victim of domestic violence.

Concerning best interests, the trial court observed that not only was there was a lack of evidence of a strong bond between respondent-mother and the children, but there was evidence that the children had grown fearful of being in the home with respondent-mother because of the people she associated with, combined with her alcohol problems. The court added that respondent-mother had provided the children with a home environment "that's hostile, that's abusive, that's assaultive, and is filled with arguments and filled with alcohol," and that "time after time, arrest after arrest, jail time after jail time," respondent-mother had put "her own interests over her children." The court further stated that respondent-mother's recent unemployment had hampered her ability to provide material necessities to the children and that her immediate post-incarceration housing was to be a homeless shelter. The court then expressed concern that the children lacked housing stability as the result of several changes of residential placement. The court proclaimed, "The mother has given me absolutely no hope based on her testimony that she can maintain stability on even a short term basis let alone a permanent basis." The court also noted that the children had been doing better in foster placement.

On appeal, respondent-mother does not argue that a strong bond exists between herself and the children. Nor can she deny her history of exposing the children to her excessive alcohol consumption, being arrested, and being involved in domestic violence. Respondent-mother was incarcerated at the moment, had no job to return to upon her release, and had no home for herself or her children to resort to but for what she might be able to work out with the assistance of a shelter. Proper foster care and the possibility of adoption would provide a chance for more

stability for the children.[3] Respondent-mother has failed to show that the trial court clearly erred in concluding that termination was in the children's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Patrick M. Meter
/s/ Michael J. Riordan

[3] A mental-health therapist testified that the children were "currently in a stable environment."